IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 178 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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DINESH S THAKKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 178 of 2002

MR RAJESH K SHAH for Petitioner No. 1

V M Pancholi, APP for Respondent No. 1

RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 05/04/2002

ORAL JUDGEMENT

The present petition under Article 226 of the Constitution of India has been filed by the petitioner above named chaallenging the FIR being C.R. No.82/2002 registered with Mandvi Prohibition Police Station at

Mandvi in Surat District for offence punishable under sections 70 and 81 of the Bombay Prohibition Act, 1949 on 17.1.2002 against the present petitioner.

2. The aforesaid FIR was lodged by the Prohibition Task Force at Surat stating that the petitioners herein were found carrying rotten jaggery in a tempo bearing No.GJ-15-U-5864 and committed the aforesaid offence. The petitioner has challenged the aforesaid FIR on various grounds. The court had issued notice at the first instance and rule was issued thereafter. In response to the service of notice of rule, Mr V M Pancholi, learned APP has appeared before the Court. I have heard the learned Advocates for the parties and have perused the papers. The facts are not in dispute. It is alleged against the petitioner that a tempo was searched and it was noticed that rotten jaggery was found in it and there was no pass or permission for carrying the same. Therefore, FIR was filed. During the course of investigation, it has been derived that there was some mechanical defect in the tempo which carried the said jaggery. It was also noticed that the jaggery was not to be imported in the State of Gujarat but it was simply goods in transit and on account of mechanical defect in the said vehicle, the goods were taken out from the said tempo and stored at the place in question. After the defect was removed, the tempo was brought back to the place of the petitioner and the goods were again loaded in the said tempo so as to take the same to the place at which the goods were required to be taken. It is required to be considered that even the learned Magistrate has handed over the muddamal jaggery to the petitioner by way of interim arrangement. It further appears from the record that bills have been produced in order to show that this was gur power and it was to be used as cattle food and it was being carried from Navapur District to Talasari District, Thane, Maharashtra State. This clearly shows that the muddamal jaggery was not to be used or consumed in the State of Gujarat. Even otherwise, the material does not disclose that the said muddamal jaggery was intended to be used in Gujarat State.

3. It is a fact that rotten jaggery was a complicated issue and the Social Welfare Department of the State of Gujarat had issued certain directions for the said purpose. First one is a circular dated 11.7.1995. Another one was issued by the Director General of Police and Inspector General of Police dated 20.1.1995. Another such circular was issued by the said Office dated 17.11.2000. In this connection, even a writ

petition was filed and disposed of by this court on 28.11.1986 in Special Criminal Applications No.4 and 5 of 1986. Another Criminal Misc.Applications No.774 and 775 of 1985 were also disposed of by this court by oral order B dated 1.7.1985. One more Criminal Misc.Application No.4763/98 was disposed of by this Court on 27.11.1998. Other such matters were also disposed of by this Court. Last decision appears to be of 10.7.2001 in Criminal Misc.Application No.2170/2001 with other allied criminal Misc.Applications disposed of by this Court. In view of the aforesaid circulars and decisions of this Court, it is very clear that before going for a FIR or a complaint and before such complaint or FIR could be investigated, it was necessary to consider the aforesaid circulars and decisions of this court. This appears to have been omitted in the present matter.

4. In above view of the matter, it is very clear that when the records show that the goods were simply in transit and it was brought to the place of the petitioner only on account of the mechanical defect in the motor vehicle and the goods were loaded back in the said tempo which also clearly shows that the goods in question were not to be used or consumed in the State of Gujarat. Therefore, no offence is made out even as per the police investigation papers. IN that view of the matter, when no offence is made out, it would be just, proper and legal to allow this application and set aside the aforesaid FIR.

5. For the foregoing reasons, this petition is allowed. The FIR being CR No.82/2002 registered at Mandvi Prohibition Police Station at Mandvi in Surat District for the offences punishable under Bombay Prohibition Act, 1949 against the petitioners is ordered to be quashed and set aside. Rule is made absolute accordingly.

5.4.2002 [D P Buch, J.]
msp